REMARKS

Claims 1-14 are pending in the application. Claims 15 and 16 have been canceled. Claims 1, 2, 8, 9, and 11 are amended herein. Claims 1-16 stand rejected under 35 U.S.C. §112, second paragraph. Claims 1-3, 8-10, and 15-16 stand rejected under 35 U.S.C. §103(a) over U.S. Patent No. 5,857,188 to Douglas ("Douglas") in view of U.S. Patent No. 6,477,561 to Robsman ("Robsman"). Claims 4-7 and 11-14 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Douglas and Robsman in view of U.S. Patent No. 6,658,449 to Brenner et al ("Brenner"). Applicant respectfully traverses these rejections for at least the reasons set forth below. Applicant thanks the Examiner for withdrawing the rejections under 35 U.S.C. §101 recited in the previous Office Action.

Rejections under 35 U.S.C §112, Second Paragraph

Claims 1-16 stand rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant respectfully traverses, as many of the questions raised in the Office Action are either irrelevant to the claims, or are described in more detail in the specification, where such details are more appropriate. However, in an effort to allowance of the instant claims, Applicant has amended claims 1, 2, 8, 9, and 11 to more clearly describe the claimed invention, rendering the objections moot. In the event the Office is of the opinion that one or more of the questions remains unanswered, Applicant's undersigned representative respectfully requests that the Examiner schedule a telephonic or in-person interview with the undersigned representative to clarify the claimed invention, the terms recited in the claims, and the definitions of those terms that appear in the specification.

Rejections under 35 U.S.C §103(a)

Claims 1-3, 8-10, and 15-16 stand rejected under 35 U.S.C. §103(a) over U.S. Patent No. 5,857,188 to Douglas ("Douglas") in view of U.S. Patent No. 6,477,561 to Robsman ("Robsman"). Claims 4-7 and 11-14 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Douglas and Robsman in view of U.S. Patent No. 6,658,449 to Brenner et al ("Brenner"). Applicant respectfully traverses.

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As a threshold issue, Applicant's undersigned representative respectfully submits that Robsman and Douglas are not related art. That is, it is respectfully submitted one skilled in the art of CPU performance optimization would not be motivated to look to a disclosure for a "...method, apparatus, and article of manufacture for monitoring and regulating access to a database" in which the "...intercepted requests are rejected or allowed in accordance with the indication signal" (Douglas Abstract). In the context of CPU performance optimization, it is unacceptable to reject a request. In fact, even the idea of "merely" delaying execution of a request, as set forth in Applicant's claimed invention, would be counterintuitive to one skilled in the art, as described in part in the Background section of Applicant's disclosure. It is further submitted that Brenner fails to remedy this deficiency. It is respectfully submitted that, the combination of the references being improper, the Office Action fails to set forth a *prima facie* argument for obviousness, and Applicant's undersigned representative respectfully requests that the rejection be withdrawn.

Even if, *arguendo*, the references were seen as being analogous art, Applicant's undersigned representative respectfully submits that the motivation to combine the references recited in the Office Action is purely based on hindsight. A patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. KSR Int'l Co. v. Teleflex, 127 S.Ct 1727, 1741 (2007). As former Chief Judge Markey of the Federal Circuit has stated, "virtually all inventions are 'combinations', and ... every invention is formed of 'old elements' .... Only God works from nothing. Man must work with old elements." H.T. Markey, *Why Not the Statute?* 65 J. Pat. Off. Soc'y 331, 333-334 (1983). The factfinder should be aware of the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning. KSR Int'l Co. v. Teleflex, 127 S.Ct at 1742. In determining whether a claimed invention is an obvious combination of prior art references, it must be shown there is an apparent reason to combine the known elements in the fashion claimed. Id. at 1741. It is respectfully submitted that the Office Action fails to provide any such reason aside from a paraphrasing of Applicant's claims.

Even if, *arguendo*, the combination of the references were seen as being proper, Applicant's undersigned representative respectfully submits that the references, either alone or in combination, fail to teach or suggest all elements of Applicant's claimed invention. In the Office Action (Page 4, 3rd paragraph of item 5) it is asserted that in Column 8, lines 12-18 of Douglas

"its understood that the system conditions are periodically retrieved and checked and once the system check passes polling stops". Applicant respectfully traverses, and directs the Examiner's attention to Figure 4 of Douglas. Figure 4 clearly illustrates that if access is denied (as described in Douglas, Column 8, lines 7-32), an error message is returned and the entire action is sent back to the user, who must re-send the request before it can be processed. Douglas therefore clearly does not teach or suggest the elements for which it is cited.

Similarly, the Office Action points to Robsman as disclosing allocating a transaction request to one of at least one central processing unit or if the current load is above the predetermined threshold, delaying execution of the transaction request for a predetermined time delay. (Office Action, page 5, item 7). Applicant's undersigned representative respectfully traverses. Robsman discloses delaying execution of a thread depending on the number of active execution threads compared to a variable limit. (Abstract, Column 5, lines 5-10). As disclosed in the Background section of the instant application, the number of threads in a CPU's queue is not necessarily indicative of the load on that CPU, as execution of some threads may be momentarily paused while other processing occurs (e.g., data is retrieved, etc.). Thus, Robsman cannot be seen as disclosing delaying a transaction request based on whether CPU utilization is below a certain threshold (as recited in Applicant's claim).

Robsman and Douglas, when viewed either alone or in combination, fail to teach or disclose all elements of Applicant's claimed invention, and Applicant's undersigned representative respectfully submits that Brenner fails to remedy these shortcomings. It is therefore respectfully requested that the rejection be withdrawn.

Conclusion

Having responded to all objections and rejections set forth in the outstanding Office Action, it is submitted that the claims are in condition for allowance and Notice to that effect is respectfully solicited. Additional characteristics or arguments may exist that distinguish the claims over the references cited by the Examiner, and Applicant respectfully preserves the right to present these in the future, should they be necessary. In the event that the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, the Examiner is courteously requested to contact Applicant's undersigned representative. In the event an extension of time is required hereunder, applicant respectfully requests that such extension be granted.

The Commissioner is authorized to charge any additional fees associated with this filing, or credit any overpayment, to Deposit Account No. 19-3790. If an extension of time is required, this should be considered a petition therefor.

Respectfully submitted,

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